

## **BILLS SUPPORTED AND OPPOSED BY THE AIA NEW YORK CHAPTER**

Assembled by Jay Bond, AIANY Policy Director

### **Non-Design Professional Ownership**

**A.4581 (Canestrari)**

**Co-sponsors: Abbate, Calhoun, Cook, Cusick, Englebright, Jaffee, Magee, Magnarelli, Markey, McEneny, Morelle, Pretlow, Tobacco**

**Status: In Assembly Higher Education Committee**

**S.2987 (LaValle)**

**Passed Senate**

**Co-sponsors: DeFrancisco**

**Status: Passed Senate, March 10, 2011**

Under current law, architectural, landscape architectural, engineering and land surveying firms (except for grandfathered corporations) must be owned 100% by licensed design professionals. This legislation recognizes that these restrictive ownership provisions subject design professional firms to competitive disadvantages. If enacted, design professional firms would be allowed to offer key personnel such as business managers, human resources managers or computer information and other specialists an equity interest in the firm, up to 25%. Shareholders could include such employees or employee stock ownership plans (ESOPs), provided that at least 75% of the voting shares of the corporation be owned by licensed design professionals. The president, chair of the board, chief executive officer and single largest shareholder would be required to be licensed design professionals. Passage of this legislation would bring New York State law in line with most other states which allow for non-design professional ownership.

### **Design Liability Reform**

**A.2475 (Canestrari)**

**Co-sponsors: Cook, Latimer, McEneny, Ortiz**

**Status: In Assembly Higher Education Committee**

This legislation is an important step in the effort to protect the rights of injured victims while at the same time restoring fairness and balance to a tort system that has grown costly.

In an action brought by an owner/client against a design professional, a three year statute of limitation applies and the cause of action accrues at the time of injury. Third party suits, however, create a situation of perpetual liability, whereby the injured party has never contracted with the design professional. As a result, design professionals are answerable for an indefinite period after project completion, long after the facility has been subjected to wear, tear and potentially insufficient maintenance. Design liability reform legislation would strengthen the existing statute by enacting a ten-year statute of repose, plus a one-year limit for any suit brought against a licensed

design professional. The legislation recognizes that the design professional has no control over the structure long after construction is complete.

#### **Good Samaritan Act**

**A.3884 (Englebright)**

**Co-sponsors: Barclay, Colton, Galef, J. Rivera, Lavine, Lupardo, McEneny, Perry, Reilly, Schimel, Schimminger, Tobacco**

**Status: In Assembly Higher Education Committee**

**S.3720-A (Stachowski)**

**Cosponsors: Breslin, Diaz, Dilan, Hassell-Thompson, C. Johnson, Onorato, Oppenheimer, Savino, Thompson**

**Status: Passed Senate, June 25, 2010**

**No 2011 Senate bill yet**

This legislation is important to design professionals and state/local jurisdictions. Architects, landscape architects, engineers and land surveyors can provide essential services during natural or man-made disasters and emergencies to help protect the public, with the confidence that there will be sufficient immunity from liability while providing these services.

Architects are often willing to volunteer their time and services if asked by government agencies to ensure the preservation of a community's health, safety and welfare. During such situations a licensed architect may be exposed to questions of liability even though he or she is acting in good faith. While most states have statutes that cover certain volunteers from liability during an emergency situation, it is questionable if they would protect an architect. This ambiguity is corrected in the proposed legislation.

#### **Bills We Oppose**

**Professional Certification, prohibition**

**A.1528 (Brennan)**

**Co-sponsors: Abbate, Boyland, Clark, Colton, Gottfried, Hevesi, Jaffee, Jeffries, Kellner, Lancman, Millman, Pheffer, Weprin**

**Status: In Assembly Ways and Means Committee**

**S.389 (Krueger)**

**Co-sponsors: Diaz, Dilan, Hassell-Thompson**

**Status: In Senate Cities Committee**

S.389 and A.1528 would require that city employees in all cities of New York State approve plans for new construction of any structure within its boundaries. In so doing, the legislation would prohibit any architect or engineer from certifying building plans. Abolition of the self-certification process, in New York City specifically, could result in a tremendous administrative backlog in the already overburdened Department of Buildings, and have long-term negative consequences for both the building community as well as its occupants (commercial tenants or residents).

AIA New York State, Inc. is as committed as the New York State Legislature to

preventing abuses that have occurred in the professional certification process. Such abuses are detrimental to the public safety and welfare of New York City residents and every other city in the State, and are a detriment to our profession. We believe, however, that it is in the best interest of all New Yorkers to strengthen the existing statute rather than abolish the self-certification process all together, as is contemplated in S. 389 and A. 1528.

Timely approval of permits and plans by the Department of Buildings in New York City is essential to our economic well-being, and should remain a priority, ever more so in light of enactment of the recent federal stimulus package, which requires expedited local processes for funding to have its intended stimulative effect on job creation and economic development.

***Criminal Prosecution for Building and Fire Code Violations***

***A.3094-A (Benjamin)***

***Cosponsors: Clark, Errigo, Espiallat, Hooper, Jeffries, John, Robinson, Weisenberg***

***Status: In Assembly Governmental Operations Committee***

This bill would allow law enforcement to pursue criminal liability against an individual who knowingly does not remedy a violation of the uniform fire and prevention and building code which results in serious physical harm or death of a person. Such individual would have to have been served, either personally or by registered mail, with an order to correct the violation.

We oppose the bill as overly broad in its reach. As contemplated in this bill, a remedy to a violation may be beyond the scope of work of the individual served. A builder, architect, tenant contractor, subcontractor, construction superintendent, or their agents, may not be able to compel the correction of a violation since they do not control the building or the project. As written, the bill is overly broad and should not be enacted.

***Construction Threshold***

***A.5827 (Gunther)***

***Cosponsors: None***

***S.4357 (Young)***

***Cosponsors: None***

***Status: In Higher Education Committee***

This bill introduced at the request of the Legislative Commission on Rural Resources, would increase the threshold for which professional services of an architect are required from \$20,000 to \$50,000 alterations to building structures outside New York City.

The threshold for new public projects requiring the services of a professional engineer or land surveyor would also be raised to \$50,000. This threshold would also apply to alterations to public or private projects. The minimum square footage threshold for architects, engineers and land surveyors would also rise from 1500 to 3,000 square feet

for residence buildings. We believe these provisions would compromise public safety and are not in the public interest.

### **Interior Design Bills**

#### ***S.430 (Krueger)***

***Cosponsors: None***

***Status: In Senate Higher Education Committee***

This bill would allow those who have been practicing interior design for over fifteen years to apply to the State Education Department for permission to use the title “certified interior designer” without having to meet the education and examination requirements of the Education law.

#### ***A.189 (Cahill)***

***Cosponsors: None***

***Status: In Assembly Governmental Operations Committee***

This bill limits contracts for state interior design services to “an interior designer possessing certification pursuant to article one hundred sixty-one of the education law or provided under the supervision of a certified interior designer,” thereby creating a monopoly for “certified interior designers.” By doing so, it would drive up the cost for such services by limiting the pool of qualified bidders.

#### ***A.6933 (Bing)***

***Cosponsors: Bronson, Gabryszak, Galef, Jaffee, McDonough, P. Rivera, Stevenson, Schroeder, Titone, Weprin***

***Status: Higher Education Committee***

The bill would allow interior designers (whether certified or not) to form partnerships or other business entities with architects, landscape architects, engineers or land surveyors.